

**Christine Joyce**

(**EXTRA INFORMATION**)

Consent

**From:** Roland Bartl  
**Sent:** Friday, May 04, 2012 1:38 PM  
**To:** Christine Joyce  
**Cc:** Manager Department; Planning Department  
**Subject:** FW: 77 Powdermill Rd - tenant expansion issue (Use Special Permit Amendment)  
**Attachments:** 77 Powdermill Letter to Selectmen.pdf; 77 Powdermill Rd 2012 CTKD Mods.pdf; 2008 Site Plan - 77 Powdermill Road.pdf; 420, 77 Powder Mill Rd (rec).pdf; RE: 77 Powdermill Rd - tenant expansion issue

I recommend Board of Selectmen approval of the attached request for amendment of Special Use Permit #04/22/09 - 420. The request letter is attached along with supporting documentation. The site address is 77 Powder Mill Road, directly across from Powder Mill Plaza at the intersection with High Street. I do not believe that this matter warrants a public hearing.

To follow is a draft decision amendment for the Chairman's signature.

Roland Bartl, AICP  
Planning Director  
472 Main Street  
Acton, MA 01720  
(978) 929-6631

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**From:** Don Lee [mailto:donjlee@gmail.com]  
**Sent:** Sunday, April 29, 2012 10:05 AM  
**To:** Scott Mutch; Roland Bartl  
**Cc:** john murphy  
**Subject:** Re: 77 Powdermill Rd - tenant expansion issue

Hello Scott and Roland,

Enclosed are the documents you requested:

- an application cover letter to the Board of Selectmen for an amendment to an existing use special permit for Concord Taekwon-Do
- a electronic PDF file of building modification plan already submitted to the building department for which you have hard copies
- the 2008 site plan showing current parking layout showing 48 parking spaces

If there are any questions or issues, please contact me as soon as possible.

Thank you,  
Don  
978-973-8372

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compliance with section 6. If there are currently vacancies, there may be a surplus of parking spaces. But, in that case you might want to get a handle on what you have left, and if and how that would affect your ability to take in future tenants without having to consider a parking lot expansion. Zoning Bylaw at: <http://www.acton-ma.gov/DocumentCenter/Home/View/659>

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Number of parking spaces?

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**Cc:** Scott Mutch; Steve Ledoux; [J.Murphy@concorditftkd.com](mailto:J.Murphy@concorditftkd.com)  
**Subject:** RE: 77 Powdermill Rd - tenant expansion issue

Roland,

I appreciate your response. What do we need to do to move this along?

Don

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As noted, the special permit was for a 3,100 square foot recreation facility. The proposal now before the Town is an expansion by more than 1/3 the size of the existing facility. This is a substantial increase from what the Board of Selectmen approved in the special permit, not a minor change. Yes, there is a judgment call in every case. I do not believe that in this case Scott (nor I) have the administrative authority to approve this proposed increase.

I believe that the approach that Scott suggested is an application to the Board of Selectmen for an amendment of the special permit (#04/22/09 - 420), which the Board of Selectmen can consider with or without a public hearing. Based on the information we have on this at this time, we would recommend that the Board could grant this without holding a public hearing - meaning that the matter could be disposed with Selectmen approval rather quickly within the Selectmen's' meeting schedule but without the need to wait out legal time periods for a public hearing.

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Planning Director  
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Acton, MA 01720  
(978) 929-6631

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**From:** Steve Ledoux  
**Sent:** Thursday, April 26, 2012 10:52 AM  
**To:** Roland Bartl  
**Subject:** FW: 77 Powdermill Rd - tenant expansion issue

Can you look into this?

Steven L Ledoux

Town Manager

472 Main Street

Acton, MA 01720

Telephone (978) 929-6611

When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

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**From:** Don Lee [mailto:[donjlee@gmail.com](mailto:donjlee@gmail.com)]  
**Sent:** Thursday, April 26, 2012 10:51 AM  
**To:** Manager Department  
**Cc:** john murphy  
**Subject:** 77 Powdermill Rd - tenant expansion issue

Dear Mr. Ledoux,

I'm the owner of 77 Powdermill Rd. The Concord TaeKwonDo tenant is planning to expand into some additional space of about 1,100 sqft. The tenant already received a special permit for commercial recreation for about 3,100 sqft of space less than three years ago without any issues. However, Mr. Scott Mutch has stated that the tenant is required to submit yet another application for the small expansion to be reviewed by the Board of Selectman and thereby potentially delaying the expansion for two or more months. There is no set criteria for such an action except for Mr. Mutch's "comfort level".

Please kindly advise why such an additional process of review and delay might be needed. Such seemingly arbitrary processes and ambiguity have a huge impact on scheduling, stresses/efforts, and income for small businesses including me, the tenant, and contractors.

Please contact me at your earliest convenience. I look forward to hearing from you. Thank you.

Kind regards,

Don Lee

978-973-8372

ACD Lee Investments, LLC  
416 Harrington Ave  
Concord, MA 01742  
978-973-8372  
[donjlee@gmail.com](mailto:donjlee@gmail.com)

April 27, 2012

**SUBMITTED VIA EMAIL**

Acton Board of Selectmen  
Town of Acton  
472 Main St  
Acton, MA 01720

RE: Amendment to Use Special Permit #04/22/09-420

Dear Board Members:

This letter is an application for an amendment to use special permit #4/22/09-420 for which prior approval was obtained in June 2009 without any issues. The amendment is for an internal expansion of an additional 1,100 square feet of adjacent space for use by:

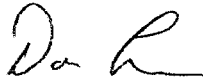
Concord Taekwon-Do (CTKD)  
77 Powdermill Rd, Acton, MA  
Owner: Mr. John Murphy

Currently CTKD uses 3,145 sq.ft. and the expansion increases the total space to 4,245 sq.ft. The enclosed proposed building plan shows a simple shift into the adjacent internal area for expansion. CTKD's normal operating hours are Monday through Friday 12PM-8:30PM and Saturday 10AM-1:30PM.

Exhibit A shows a parking analysis for uses at 77 Powdermill Rd referencing Section 6 of 2010 Acton Zoning Bylaws. There are currently 48 parking spaces. 27 parking spaces are required for existing uses and 35 expected with full tenant occupancy. Moreover, we have never had a shortage of parking spaces at the property. The analysis shows that we meet the current zoning parking requirements.

We kindly request an expeditious approval for the amendment of this use special permit. If there are any questions or issues, please contact me at 978-973-8372 or [donjlee@gmail.com](mailto:donjlee@gmail.com). Thank you kindly.

Sincerely,



Don Lee  
Manager, ACD Lee Investments, LLC  
Owner, 77 Powdermill Rd, Acton, MA

ENCL: Exhibit A – Parking Analysis for 77 Powdermill Rd  
Building Modification Plan (PDF attachment)  
2008 Site Plan (PDF attachment)

CC: Mr. John Murphy, Owner, Concord Taekwon-Do  
Mr. Scott Mutch, Acton Planning Department

## Exhibit A

### Parking Analysis for 77 Powdermill Road Reference Section 6 of 2010 Acton Zoning Bylaws

CURRENTLY OCCUPIED		USE		PARKING SPACE REQUIREMENT					
Tenant	Area (SF)	Use	Ref	6.3.1	Reserved	6.9.6.3 (70%)	6.9.6.3 (50%)	Required	Note
Concord Taekwon-Do	4,245	Commercial Recreation	6.3.1.14	21.2	-	-	10.6	10.6	1 per 200 sqft
77 Arts Academy	3,080	Educational	6.3.1.3	9.0	4.0	2.80	2.5	5.3	2 employees + 7 classrooms + 0 students > grade 10
Osmun Music	3,000	Retail Store & Svces	6.3.1.6	10.0	4.0	2.80	3.0	5.8	1 per 300 sqft
Readak	2,125	Office	6.3.1.9	8.5	4.0	2.80	2.3	5.1	1 per 250 sqft
Minimum Parking Spaces Required for Current Uses								26.8	

VACANT		USE		PARKING SPACE REQUIREMENT					
Tenant	Area (SF)	Use	Ref	6.3.1	Reserved	6.9.6.3 (70%)	6.9.6.3 (50%)	Required	Note
Unit 5 - Undetermined	3,000	Vacant 5/11/12	6.2.2	15.0	-		7.5	7.5	Assume 1 per 200 sqft
Minimum Parking Spaces Required for Undetermined Uses								7.5	

PARKING ANALYSIS SUMMARY	
Total Minimum Parking Spaces Required (Powdermill District)	34.3
Parking Spaces Currently Available at 77 Powdermill Rd	48.0



## Christine Joyce

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**From:** Roland Bartl  
**Sent:** Friday, May 04, 2012 1:16 PM  
**To:** 'Don Lee'  
**Cc:** john murphy; Planning Department  
**Subject:** RE: 77 Powdermill Rd - tenant expansion issue

Mr. Lee:

As I said on the phone - my apologies for not getting this on the May 7 Board of Selectmen agenda in time for the required agenda posting. We have a lot of balls in the air here and this unfortunately got buried a bit. I realize that this is little consolation to you. Whether it can go on as a late item I cannot tell at this time.

On the parking analysis, I do not agree that you can take the 50% discount. That would require a cooperative parking agreement for parking use on multiple different lots and properties - or at least two such lots. This is not the case here.

You can use the 30% discount; i.e. 70% of the otherwise required spaces.

Even with that the site seems to be good.

Using the 70%, the existing uses including CTKD's expansion, require 36 spaces. You have 48 spaces on the site. There are 3000 square feet vacant. Assuming Office (I believe the most "parking-intensive" use) to fill the vacancy, 9 additional spaces would be required, bringing the total to 45.

Leaving 3 spaces surplus. Perfect fit.

I will favorably recommend. But, it may not see action until 2 weeks from Monday - so May 21.

Regards -

Roland Bartl, AICP  
Planning Director  
472 Main Street  
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TCH  
DATED DOOR

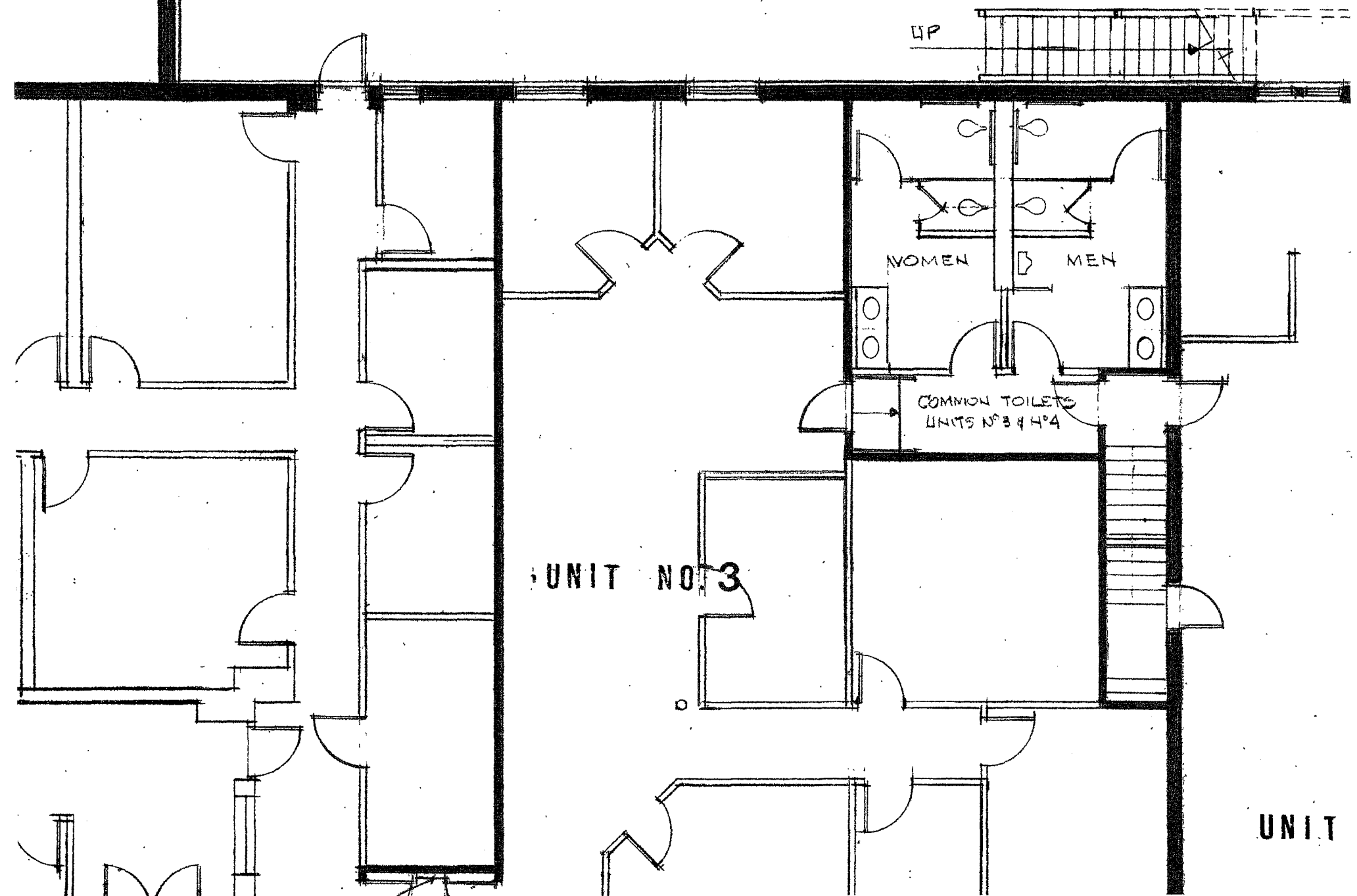
PIRE-CAST CONC PIER  
6'-0" BELOW FIN. GRADE

TYPICAL

SHEA CONC PRODUCTS FOOTING/PIER POST 90

# ELEVATION OF DECK AND WALK WAY

SCALE



23



Board of Selectmen

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 264-9612  
Fax (978) 264-9630  
bos@acton-ma.gov  
www.acton-ma.gov

**DECISION**  
**#04/22/09 – 420**  
**Use Special Permit (Commercial Recreation)**

Concord Land Corp.

June 22, 2009  
GRANTED with Conditions

Decision of the Acton Board of Selectmen (hereinafter the Board) on the application of Concord Land Corp., 109 Old Stow Road, Concord, MA 01742 (hereinafter the Applicant) for property located at 77 Powdermill Road, Suite #1 in Acton, Massachusetts, owned by the Applicant. The property is shown on the 2007 Acton Town Atlas map J-3 as parcel 50 (hereinafter the Site).

This Decision is in response to an application for a use special permit submitted to the Board on April 22, 2009 pursuant to Sections 3.5.15 and 10.3.5 of the Acton Zoning Bylaw (hereinafter the Bylaw) to establish a Commercial Recreation Use with a net floor area in excess of 2,000 square feet (hereinafter the Use).

The Board held a duly noticed public hearing on June 22, 2009. Board members Paulina Knibbe (Chair), Peter Berry (Vice Chair), Lauren Rosenzweig (Clerk), Mike Gowing and Terra Friedrichs were present throughout the hearing. The minutes of the hearing and submissions

on which this decision is based upon may be referred to in the Town Clerk's office or the office of the Board at the Acton Town Hall.

## **1 EXHIBITS**

Submitted for the Board's deliberation were the following exhibits:

### **1.1 Application items and documentation:**

- A properly executed application for a use special permit to the Board of Selectmen, received April 22, 2009.
- Filing fee.
- Application letter from John Welsh on behalf of property owner, dated April 22, 2009, with a brief description and explanation of the use special permit application request.
- Condominium Site Plan of Plan for subject property prepared by Meridian Associates, Inc., dated March 31, 2008.
- Proposed floor plan and interior build-out of use special permit space prepared by E.J. Rempelakis Associates, Architects, dated April 14, 2009.
- Certified abutters list.

### **1.2 Interdepartmental communication received from:**

- Acton Engineering Department, dated June 1, 2009.
- Acton Fire Chief, dated May 21, 2009.
- Acton Board of Health, dated May 29, 2009.
- Acton Transportation Advisory Committee, dated May 18, 2009.
- Acton Tree Warden & Municipal Properties Director, dated May 7, 2009.
- Acton Zoning Enforcement Officer, dated June 3, 2009.
- Water Supply District of Acton, dated May 6, 2009.
- Acton Building Commissioner, dated May 19, 2009.

Exhibit 1.1 is hereinafter referred to as the Plan.

## **2 FINDINGS AND CONCLUSIONS**

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

- 2.1 The Site is located within the Powder Mill (PM) zoning district and Groundwater Protection District Zone 3.
- 2.2 The Use, Commercial Recreation with 2,000 square feet or more, is allowed on the Site by special permit in accordance with the Bylaw, including any overlay district requirements.
- 2.3 The Use would be located in an approximately 16,863 square foot existing commercial building.
- 2.4 The Board has received comments from various Town departments, which are listed in Exhibit 1.2 above. These comments were considered by the Board in its deliberations, were made available to the Applicant, and are incorporated into this decision as deemed appropriate by the Board.
- 2.5 The Use and the Plan as conditioned herein are consistent with the Master Plan, is in harmony with the purpose and intent of the Bylaw, will not be detrimental or injurious to the neighborhood in which the Use is to take place, provides for convenient and safe

vehicular and pedestrian movement within and through the site, is appropriate for the Site, and complies in all respects to the applicable requirements of the Bylaw.

### **3 BOARD ACTION**

Therefore, the Board voted on June 22, 2009 to GRANT the requested use special permit #04/22/09 – 420 subject to and with the benefit of the following conditions and limitations.

#### **3.1 PLAN MODIFICATIONS**

The Building Commissioner shall not issue a building permit, nor shall any construction activity begin on the Site, until and unless the Zoning Enforcement Officer (ZEO) confirms that the Plan is revised to include the following additional, corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the ZEO. Where approvals are required from persons or agencies other than the ZEO, the Applicant shall be responsible for providing evidence of such approvals to the ZEO.

- 3.1.1 The applicant shall submit a complete parking analysis for the subject property. The analysis shall indicate all uses within the structure, their minimum parking requirements, and a site plan/parking lot layout which is to scale and very clearly identifies all parking spaces and traffic circulation paths within.

#### **3.2 CONDITIONS**

The following conditions shall be binding on the Applicant and its successors and assigns. Failure to adhere to these conditions shall render this use special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any building or occupancy permit issued hereunder. The Town of Acton may elect to enforce compliance with this use special permit using any and all powers available to it under the law.

- 3.2.1 The Use shall be established and operated at all times in compliance with all applicable requirements promulgated by the Acton Board of Health.
- 3.2.2 The Use shall be established and conducted at all times in accordance with the terms of this use special permit and shall conform with and be limited to the improvements indicated in the Plan as modified herein.
- 3.2.3 This Decision shall be recorded at the Middlesex South District Registry of Deeds or the Land Court prior to the issuance of a building permit or occupancy permit for the Use, whichever is first.

#### **3.3 LIMITATIONS**

The authority granted to the Applicant under this use special permit is limited as follows:

- 3.3.1 The foregoing conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all inclusive or to negate the remainder of the Bylaw and the Rules.
- 3.3.2 This use special permit applies only to the Site identified in this decision and to the Use and activity indicated in the Plan.

- 3.3.3 Other approvals or permits required under the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 3.3.4 Prior to any building permit being issued for the subject project, the applicant shall demonstrate compliance with any and all other comments/concerns provided by other municipal disciplines.
- 3.3.5 Prior to any Certificate of Occupancy being approved or issued for the subject use, the applicant shall demonstrate compliance with all conditions and comments imposed by the Board of Selectmen through this Use Special Permit.
- 3.3.6 This use special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this use special permit is not continued through to completion as continuously and expeditiously as is reasonable. For construction to continue towards completion as continuously and expeditiously as is reasonable, construction activity shall not rest for more than one year. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the use special permit and to require any appropriate modifications to the Plan.
- 3.3.7 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this use special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

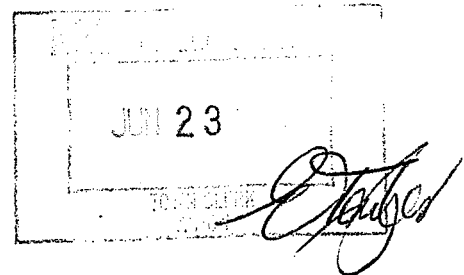
#### **4 APPEALS**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

The Town of Acton Board of Selectmen



Paulina Knibbe, Chair



This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

\_\_\_\_\_  
Eva Taylor, Town Clerk

\_\_\_\_\_  
Date

Copies furnished:

Applicant -  
certified mail #  
Town Clerk  
Fire Chief  
Owner

Building Commissioner  
Engineering Administrator  
Conservation Administrator  
Police Chief  
Assistant Assessor

Health Director  
Municipal Properties Director  
Town Manager  
Acton Water District

P:\Planning Sec\Planning\Site Plan Special Permits\Site Plan Special Use Permits\77 Powdermill Road\Decision - 77 Powdermill Road 6-22-09.doc